

# COUNTY OF SUFFOLK



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DEPARTMENT OF LAW

March 30, 2020

Hon. A. Kathleen Tomlinson, U.S.M.J.  
United States District Court, Eastern District of New York  
Long Island Courthouse  
100 Federal Plaza  
Central Islip, New York 11722

Re: McCune v. County of Suffolk  
CV14-4431(JS)(GRB)

Dear Judge Tomlinson:

The Suffolk County Attorney's Office represents defendants in this § 1983 action. Defendants submit this letter in accordance with the Court's Order of January 23, 2020, which directed the parties to file a Discovery Status Report by March 31, 2020; and in response to the purported "Joint Status Report" filed by plaintiff's counsel, Frederick K. Brewington, Esq., at 10:09 P.M. last night ("the report").

Preliminarily, defendants wish to apprise the Court that the report is not a joint report. Defendants had no participation in drafting the report, and no realistic opportunity to review the report prior to its being filed by plaintiff's counsel. My office, like all non-essential municipal government offices in the state, has been closed by the publicly announced and widely reported order of the Governor. Because the attorneys in my office do not have County issued electronic devices, we are not notified of receipt of emails until we take steps to log into the County email system. Resultantly, I did not learn of the report until after it was filed, when I logged into the County's email system at approximately 10:30 P.M. last night. At that time, I also discovered 2 emails from Mr. Brewington, sent at 7:05 and 7:10 P.M., to which copies of the proposed report were attached for my review (copy of emails attached). The first of these emails stated that if I did not respond by 10 P.M., plaintiff would file the report "with the understanding that [defendants] may want to submit further information to the Court." Yet, the report as filed is termed a "joint" report without any disclosure of the actual circumstances of the notice given to defense counsel.

Regrettably, we are constrained to say we do not believe that plaintiff's unilateral filing of the report after we did not respond within three hours on a Sunday evening was reasonable, particularly in light of the ongoing Covid-9 pandemic. At minimum, we believe it was incumbent on plaintiff's counsel to inform the Court that we did not participate in its drafting, and that we were given only 3 hours notice to do so.

Moreover, the report is, simply put, inaccurate. We have, in fact, mailed supplemental responses to the interrogatories to plaintiff's counsel. A second copy was emailed today. Plaintiff's counsel has not identified any particular document demand which defendants supposedly failed to adequately respond to, either during the recent "meet and confer" or in the report.

Lastly, plaintiff's rush to file the report without our participation was wholly unnecessary. Pursuant to the Court's order of January 23, 2020, the joint report is not due until tomorrow. Accordingly, there was no reason for plaintiff to unilaterally file the purported report last night without defendants' input, on three hours notice.

We thank the Court for its time and attention to this case.

Respectfully submitted,

Suffolk County Attorney's Office  
Suffolk County Department of Law

By: /s/ Arlene S. Zwilling  
Arlene S. Zwilling  
Assistant County Attorney